IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

Davendra Kumar Lodha
vs.
Nathdwara Mandir Mandal.

S.B.CIVIL SECOND APPEAL NO.141/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 24.3.2006 PASSED BY SHRI JAMNA DAS THANVI, ADDITIONAL DISTRICT JUDGE, NATHDWARA IN CIVIL APPEAL NO.13/2004.

DATE OF JUDGMENT ::: 15.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Saruparia, for the appellant.
Mr. DR Bhandari, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

This second appeal is mainly against the judgment and decree of the first appellate court dated 24.3.2006 by which the first appellate court reversed the judgment and decree of the trial court granting injunction in favour of

the appellant/plaintiff, however, even after upholding the finding of the trial court that the appellant was not the tenant but was the licensee for a small space in the temple.

It appears from the facts of the case that the plaintiff was given license to sit in the temple premises for short period of darshans at the time of Mangla and Rajbhog darshans. For that short period of few hours, the plaintiff was permitted to sell some goods which are used in sewapuja. After that, the plaintiff was to vacate the suit premises is an admitted fact. Therefore, no exclusive possession of the said space was given to the plaintiff is also an admitted position. Looking to the nature of the business which the plaintiff was doing, it is clear that for that purpose, the tenancy was not created by even implication.

The concurrent finding of fact is based on not only evidence but also on admitted fact as mentioned by the plaintiff in the plaint. The trial court still granted injunction which appears to be on the basis of the plea taken by the respondent that the respondent has provided alternate accommodation to the plaintiff for doing the same business on the basis of license. The trial court ignored the fact that the licensee has no right to seek injunction against the licensor.

So far as alternate place is concerned, for that the plaintiff may request the management and no relief can be granted by the Court in this respect in a suit for mere

injunction because whether to grant license, choice of greater can only prevail.

In view of the above, I do not find that any substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya